



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Order 96-3-40

Served March 18, 1996

Issued by the Department of Transportation  
on the 18th day of March, 1996

Application of

**KUWAIT AIRWAYS CORPORATION**

for an exemption from Subparts K and S of  
Part 93 of Title 14, Code of Federal Regulations  
pursuant to Section 206 of the Federal Aviation  
Administration Authorization Act of 1994 (Slot  
Allocation at Chicago's O'Hare International  
Airport)

**Docket OST-96-1099**

**ORDER GRANTING EXEMPTION**

**APPLICATION**

On February 22, 1996, Kuwait Airways Corporation (Kuwait Airways) requested an exemption from 14 C.F.R. Part 93, Subparts K and S, under 49 U.S.C. 41714(b)(1). Specifically, Kuwait Airways seeks the exemption to the extent necessary to enable it to continue operating two weekly round-trip flights between Kuwait, the intermediate point Amsterdam, The Netherlands, and the terminal point Chicago, Illinois (O'Hare International Airport), using Airbus A340-300 equipment (a Stage 3 aircraft).

In support of its request, the applicant states that it commenced twice-weekly air service between Kuwait and Chicago's O'Hare, via Amsterdam in the winter season. Kuwait Airways conducts these operations consistent with its foreign air carrier permit. Order 95-11-17.

The applicant indicates that in October 1995 it filed a request with the Federal Aviation Administration (FAA) for "new or additional" international takeoff and landing slots at O'Hare International Airport for the summer 1996 season.<sup>1</sup> It states that absent the slot

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<sup>1</sup> Kuwait Airways proposes to continue conducting two weekly round-trip operations between Kuwait and Chicago during the summer season (April 7, 1996, through October 26, 1996). During the International Air Transport Association meeting in November 1995, and on January 29, 1996, the FAA notified the applicant that it was unable to confirm Kuwait Airways' request for allocation of slots. At that time, the FAA stated that Kuwait Airways' request, along

allocation by the FAA, it will be forced to terminate its direct-service operations between Kuwait and Chicago during the summer season.

The applicant notes that the Department, in issuing to the airline a foreign air carrier permit, determined these operations to be in the public interest. Therefore, the carrier maintains that “it would be inconsistent for the Department to grant [Kuwait Airways] the authority to operate to Chicago, but then deny [Kuwait Airways] the right to land there.” The applicant further points out that since it commenced operations in the market, thousands of passengers have benefited from the services it has provided.<sup>2</sup> Thus, it asserts that if its operations are terminated, the traveling and shipping public will be inconvenienced and Kuwait Airways will suffer significant financial harm.<sup>3</sup>

Kuwait Airways states that the summer season is the peak vacation season not only for Kuwaitis but also for citizens of the United States.<sup>4</sup> The carrier further submits that the Chicago-Kuwait market is “vastly underserved,” and that there is substantial passenger demand for these operations in the City of Chicago and the State of Illinois.<sup>5</sup> The applicant states that it will continue to provide these services using Airbus A340-300 equipment, a Stage 3 aircraft.

On February 29, 1996, the City of Chicago, owner and operator of O’Hare International Airport, filed in support of the application. The applicant’s request is without opposition.<sup>6</sup>

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with the requests of other foreign air carriers, exceeded the total number of slots that the FAA was able to allocate, consistent with 49 U.S.C. 41714(b)(2).

<sup>2</sup> Kuwait Airways represents that since commencing operations on October 30, 1995, it has transported more than 8,400 passengers between Chicago and Kuwait, averaging about 150 passengers per flight.

<sup>3</sup> Prior to the applicant’s direct-service operations in the market, passengers were required to change planes in New York, in a third country, or both.

<sup>4</sup> The carrier estimates that about 28,000 passengers will travel on the 120 flights to and from Chicago that it proposes to operate this summer.

<sup>5</sup> See Docket 50258, Answer of the City of Chicago at ¶ 4, filed April 18, 1995.

<sup>6</sup> On February 29, 1996, Kuwait Airways notified the Department that it had polled the various interested parties in this case, and that these parties did not object to either its request for expedition or its request for exemption.

## STATUTORY BACKGROUND

Subparts K and S of 14 C.F.R. Part 93 designate Chicago's O'Hare International Airport, New York's John F. Kennedy International and LaGuardia Airports, and Washington, D.C.'s National Airport as high density traffic airports and prescribe certain air traffic rules for operating aircraft at airports. These regulations limit the number of allocated Instrument Flight Rule (IFR) operations (takeoffs and landings) for specified classes of users during certain periods of the day.

Pursuant to 49 U.S.C. 41714(b)(1), if the Secretary of Transportation finds it to be in the public interest, the Secretary may grant an exemption from the requirements of Subparts K and S of 14 C.F.R. Part 93 (pertaining to slots at high density airports), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft.

## DECISION

We find that grant of this exemption is in the public interest. Currently, Kuwait Airways offers direct, one-stop service between Kuwait and Chicago O'Hare (*Official Airline Guide*, February 1996, electronic edition).<sup>7</sup> It is clear that terminating services, particularly during the peak-travel period, will be especially disruptive to the traveling and shipping public.<sup>8</sup> Our actions here will prevent such termination of services, ensure continued enhancement of air services between Kuwait and the United States, and continue to provide the public with improved passenger and shipping options.<sup>9</sup>

While Kuwait Airways correctly notes that our grant to it of a foreign air carrier permit that includes Chicago authority was based on a public interest finding (as was our earlier grant to the carrier of exemption authority in Order 95-5-5 to conduct such service), that finding alone is not determinative for purposes of administering the exemption provisions of 49 U.S.C. 41714(b)(1). Rather, our decision here is based on our consideration of the factors, noted above, that are relevant to its request in this Docket and, based on our consideration of those specific factors, we have decided to grant the request for exemption.

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<sup>7</sup> The applicant states that it fully intends to continue using Stage 3 aircraft in the conduct of these operations, as required by the statute.

<sup>8</sup> Kuwait Airways provides the only direct-service operations in the Kuwait-Chicago market.

<sup>9</sup> While our findings in this matter will allow for the continuation of the applicant's current operations in the Chicago market, we emphasize that airline requests for these exemptions will be decided by the Department on a case-by-case basis.

Finally, while we fully recognize the potential public benefits resulting from these operations, we are mindful of the various traffic constraints associated with O'Hare operations, and we therefore direct the applicant to continue its efforts in conjunction with the Federal Aviation Administration's Office of Chief Counsel, Airspace and Air Traffic Law Branch to secure needed slots from the existing allocation pool.

Since grant of this exemption is dependent upon the applicant's existing U.S.-Kuwait operating authority, we attach the condition that this exemption authority be used only in the provision of Kuwait Airways' service between Kuwait and Chicago O'Hare. Furthermore, in accordance with the requirements of the statute, all aircraft operations performed under this exemption shall be conducted by Stage 3 aircraft. We also note that grant of this exemption provides Kuwait Airways with only a temporary slot allocation at O'Hare Airport and does not confer to the applicant any ability to sell, trade, transfer, or convey this slot allocation.<sup>10</sup>

This Order is issued under authority delegated in 49 C.F.R. 1.56(l).

### **ACCORDINGLY,**

1. The Department grants a temporary exemption from 14 C.F.R. Part 93, Subparts K and S under 49 U.S.C. 41714(b)(1) to Kuwait Airways Corporation to the extent necessary to permit Kuwait Airways to operate scheduled arrivals at Chicago's O'Hare International Airport on Mondays and Thursdays at 5:45 P.M.; and to operate scheduled departures from Chicago's O'Hare International Airport on Mondays and Thursdays at 8:30 P.M. (all times are local time);
2. As a condition of approval, Kuwait Airways may use this slot allocation only to provide service between a point or points in Kuwait and the terminal point Chicago, Illinois (O'Hare International Airport);
3. As a further condition of approval, the Department directs that all aircraft operations granted under this exemption must be provided by Stage 3 aircraft;
4. The authority granted under this exemption is subject to all of the other requirements delineated in 14 C.F.R. Part 93, Subparts K and S;
5. The temporary slot allocation provided for in ordering paragraph 1 above is effective commencing on April 7, 1996, and expires on October 26, 1996; and

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<sup>10</sup> The FAA will assign slot numbers.

6. We grant the applicant's motion for expedition.

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

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